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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 567 of 1998
converted from
CRIMINAL MISC.APPLICATION No. 3911 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PATEL BHOLABHAI CHATURBHAI

Versus

PATEL AMRATLAL ISHWARDAS

Appearance:

MR PN BAVISHI for Petitioner
MR PREMAL R JOSHI for Respondent No. 1
MS VALIKARIMWALA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 14/12/98

ORAL JUDGEMENT

Heard learned advocate Mr. P.N Bavishi for the petitioner. Rule returnable today. Learned advocate Mr. P.R Joshi appears for and waives service of rule on behalf of respondent no. 1. Learned APP Ms. Valikarimwala appears and waives service of rule on behalf of respondent-State.

2. This application has been preferred against the order dated 10th July, 1998 passed by the learned Judicial Magistrate, First Class, Visnagar in Criminal Case no. 508 of 1990 seeking the applicant's right to cross examine witness Bharatkumar Ramanlal Shah, and the order dated 27th July, 1998 under which the learned Magistrate has refused to recall the said witness for cross-examination by the petitioner-accused.

3. It appears that on a complaint lodged by the respondent no. 1 herein, criminal case no. 508 of 1998 was registered in the court of learned Judicial Magistrate, First Class, Visnagar against the present petitioner. The petitioner has been charged for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The trial appears to have been lingering for a considerably long time. On 10th July, 1998, the prosecution witness no. 4 one Bharatkumar Shah, an employee of the Bank, was examined by the prosecution. However, since the learned advocate appearing for the accused was not present nor was there any application for adjournment by the said advocate, the right to cross-examine the said witness by the defence was closed. On 27th July, 1998, the accused made an application to recall the said witness for cross-examination which was objected to by the complainant and under the order dated 27th July, 1998, the said application was rejected. Feeling aggrieved, the accused has preferred the present application.

4. The application is contested by Mr. Joshi on behalf of the complainant. Mr. Joshi has submitted that the prosecution has dragged on for a considerable time and on several occasions hearing had to be adjourned for want of the presence of the defence advocate, and even the witness Bharatkumar Shah had earlier remained present on several occasions and could not be examined mainly for want of presence of the defence advocate. He, therefore, submits that the present application requires to be dismissed.

5. On the facts and in the circumstances of the case, and in the interest of justice, I consider it expedient that the defence be given one more opportunity

to cross-examine the witness Bharatkumar Shah. The application is, therefore, allowed. The impugned orders dated 10th July, 1998 and 27th July, 1998 are set-aside. The petitioner-accused be given one opportunity to cross examine the witness Bharatkumar Shah on condition that the petitioner-accused shall have to pay a sum of Rs. 1000/= by way of costs to witness Bharatkumar R. Shah and a sum of Rs. 500/= by way of costs to the complainant Amratlal Ishwardas Patel. The petitioner shall cross examine the witness Bharatkumar on the date that may be fixed by the learned Magistrate without asking for any adjournment. In the event the petitioner fails to cross examine the witness Bharatkumar Shah on the date fixed by the learned Magistrate, the petitioner's right to cross examine the said witness shall stand closed.

6. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

Prakash*